United States District Court
Eastern District of Michigan

United States of America,

Plaintiff,

Criminal No. 12-20292

vs.

Honorable Stephen J. Murphy, III

D-3 Zayd Allebban,

Defendant.
_____/

Government's Sentencing Memorandum (Revised)

The United States submits its sentencing memorandum regarding defendant Zayd Allebban.

For the reasons set forth below, the government requests that the court impose a substantial custodial sentence, taking into account the advisory guideline range of 41 to 51 months.

The facts

The defendant presents a contrived and distorted view of the facts of this case in his sentencing memorandum, one that is consistent with his defense at trial but not consistent with the evidence. The court is of

course familiar with the evidence at trial, but for its convenience we will marshal some of the relevant facts here.

The evidence at trial established that Zayd Allebban obstructed justice by working with Tahir Kazmi, his boss and close friend at the Wayne County Department of Technology, to persuade Philip Shisha, a substantial vendor to the county, to conceal from federal investigators the fact that Shisha had paid as much as $100,000 in bribe/extortion payments to Kazmi over a two year period.

Tahir Kazmi was a public official, the Chief Information Officer (CIO) of Wayne County, Michigan, from 2008 through February, 2012. In this position, Kazmi had considerable power and authority regarding Wayne County contracts for information technology products and services. Kazmi was in a high level decision making position.

Zayd Allebban worked for the Department of Technology in the same time frame. Kazmi brought Allebban to the Department of Technology when he became CIO, and subsequently promoted him, first to Deputy Director of Enterprise Applications, and then to Director of Enterprise Applications. Allebban was a protégé and friend of Kazmi's.

Philip Shisha owned Strategic Business Partners, a Detroit area software development company. Starting in 2008, Strategic Business Partners received several contracts with Wayne County, through the Department of Technology, culminating in a multi-million dollar "eGov" contract that was awarded in 2009. Kazmi had power and authority over the Strategic Business Partners contracts, and had the ability to stop or delay payments to vendors, or to terminate the contracts. Starting in May 2009, Kazmi demanded payments from Shisha, and Shisha complied. Shisha testified that these payments were not loans or gifts; he paid Kazmi out of fear of losing his business with Wayne County. (2/6/13 Tr. at 118-19). These payments took various forms, including cash payments in amounts ranging from $2,500 and $11,000 and credit card payments for travel expenses of Kazmi and his family. There were approximately twenty payments, until June, 2011, totaling about $100,000.

In October, 2011, the United States Attorney's Office and the FBI began a grand jury investigation of possible corruption in Wayne County government. One of the early subjects of the investigation was Tahir Kazmi. As the investigation progressed, it also focused on

Strategic Business Partners and Philip Shisha. In early December, 2011, FBI agents attempted to interview Shisha at his home and office. As a result, Shisha approached the government through his lawyer, and told FBI agents about the payments he had made to Kazmi, and about efforts by Kazmi and Allebban to persuade him not to tell the authorities about the payments. (Allebban had met with Shisha in November, 2011, told him that Kazmi was talking to the FBI, and asked if anyone had approached Shisha. 2/7/13 Tr. at 20. Then, on December 11, 2011, Allebban met with Shisha after learning that he had been approached by the FBI, and said that "If somebody asks you if you have given any gifts, you need to say no." *Id*. at 28).

Shisha agreed to cooperate and to record conversations with Kazmi and/or Allebban. On January 19, 2012, Shisha met with Allebban at a coffee shop in downtown Detroit. At this meeting, Shisha told Allebban about the payments he had made to Kazmi, and Allebban was shocked, saying "Oh, God" and "Why did you do that?" Shisha told him, "To Kazmi, I couldn't say no to him." Allebban told Shisha not to talk with his attorney yet, and that he (Allebban) would talk to Kazmi about the situation. (2/7/13 Tr. at 32).

The next day, January 20, Allebban arranged a meeting with Shisha and Kazmi, in a car outside of an Einstein bagel shop in Farmington Hills. The conversation was recorded. (Gov't exhibits 1A-H, 2A-H). Kazmi was wary and anxious, and checked Shisha for a wire. The men discussed the payments Shisha had made to Kazmi, including $13-14,000 in credit card charges and $80-90,000 in cash:

> Kazmi: Could you give me an idea, approximately?
> Shisha: Hm, a lot of cash, I don't know man probably about eighty, ninety.
> Kazmi: Oh my goodness.
> Shisha: (Unintelligible)
> Alleban: Wow. Over two years.
> Kazmi: No, no, no, come on Philip (unintelligible). Philip, come on.
> Shisha: Tahir take (unintelligible). I can go back because I pulled it in from my account as cash. Eighty-five hundred.
> Kazmi: And that is all to me.
> Shisha: Yeah, cash, yeah.
>
> Gov't exhibit 2F, at 3.

Allebban said that, if Kazmi paid the money back, then Shisha could tell the authorities that Kazmi never gave him anything. Based on this theory, the men agreed that Kazmi would first pay back the amount of the credit card charges, so that Shisha would be able to say that he had been repaid. Kazmi would also try to repay the cash payments that he had received. Shisha insisted that Kazmi had not repaid any of the money, and that if Kazmi had told Allebban it was repaid then he was calling Shisha a liar. (Gov't exhibit 2F, at 1; 2/7/13

Tr. at 48). Kazmi closed the meeting by asking if Shisha was "sitting here on behalf of somebody" (meaning the government) and saying that "the only way I can go down is this conversation." (Gov't exhibit 2H, at 2, 2/7/13 Tr. at 49).

It is clear from the totality and context of this conversation between Shisha, Kazmi, and Allebban, that they all knew or had reason to know that Kazmi had made numerous payments to Shisha, totaling over $80,000; that they were improper payments in the nature of kickbacks or extortion payments; that the federal authorities would be interested in them; and that they needed to conceal this information. And that is what Allebban proceeded to try to accomplish.

On January 22, Allebban met with Shisha again. (Gov't exhibits 3A-C, 4A-C). Allebban delivered $14,000 in cash, saying that this would allow Shisha to say he "never gave" Kazmi the credit card funds. As for the cash payments that Shisha had made to Kazmi, Shisha was worried that the authorities would find the cash bank withdrawals that he had made, and demand explanations. Allebban told him that Kazmi wanted him to explain the cash withdrawals himself, by saying that he (Shisha)

was a gambler, or by some other false explanation. Shisha didn't see how he could credibly give such an explanation.

On January 26, Allebban met with Shisha at a FedEx store in Farmington Hills. (Gov't exhibits 5A-B, 6A-B). Allebban used a PC in the store to access his email, and based on approximate dates and amounts that Shisha gave him, fabricated five receipts to falsely indicate that Kazmi had paid Shisha back for each charge within a couple of weeks. At the end of the meeting Allebban had Shisha sign these receipts, and said he would have them signed by Kazmi as well.

On January 31, Allebban met with Shisha in a parking lot in Dearborn. (Gov't exhibits 7A-C, 8A-C). In this meeting, Allebban said he was not comfortable with the five separate receipts and that instead he had created a single "receipt," a letter dated August 16, 2011 that stated essentially that "you guys are all squared up" as of that date. In addition, Allebban delivered another $10,000 in cash from Kazmi. Allebban persuaded Shisha to sign the false document, despite his reservations about how to explain his cash withdrawals. (Gov't exhibit 16, 2/7/13 Tr. at 71). Allebban repeatedly told Shisha that the purpose of the document that Shisha would not have to tell his attorney or the

FBI that he gave Kazmi anything: "Everything is even. It's so that, you can tell, you don't, you don't have to tell your attorney you gave Tahir anything. That's the purpose of this. It's so that you can say there were no gifts, or you didn't give anything, or whatever. That's the purpose." (Gov't exhibit 8B at 3). And later, "But, yanni, you need to be able to say, yanni, with a clear conscience, man, that you paid Tahir, he paid you back, even if that means, more cash needs to come. Which it does." (Gov't exhibit 8C at 2). Allebban took the partially signed letter with him. This document was the basis for Count Three.

On February 2, Allebban again met with Shisha at the coffee shop in downtown Detroit. (Gov't exhibits 9A-C, 10A-C). They discussed what answers Shisha should give when questioned by his attorney or the FBI, and Allebban attempted to persuade Shisha not to say anything to his attorney about the payments he had made to Kazmi, because then the attorney might want to tell the authorities about the payments. (Gov't exhibit 10C at 3). Allebban told Shisha that he should conceal the payments, and should only use the "receipt" if necessary to back up his statement that he had never given Kazmi anything. At the conclusion of this meeting Allebban gave Shisha a copy of the letter with Kazmi's

signature on it. This copy of the document was the basis for Count Four. The original signed document, with both signatures, was later found in Kazmi's car when he was arrested on February 9, 2013. (Gov't exhibit 17).

The jury convicted the defendant of Counts Three and Four. All of the conduct described above is relevant conduct relating to those counts.

Sentencing Guidelines

Obstruction of Justice (Bribery/extortion involving public official)

The applicable sentencing guideline in this case is U.S.S.G. §2J1.2, Obstruction of Justice. Under 2J1.2(c)(1), if the offense involved obstructing the investigation of a criminal offense, the court is to apply §2X3.1 (Accessory After the Fact) in respect to that offense, if application of that cross reference results in a higher offense level. Thus, the court should look to the guidelines for the offense whose investigation was obstructed by defendant's conduct – the bribery/extortion by Mr. Kazmi, a public official, under §2C1.1. This cross reference should be applied using the base offense level of the offense whose investigation was obstructed; any adjustments to that

base offense level are also applied if the defendant knew, or reasonably should have known, of the facts relating to those adjustments. *United States v. Shabazz*, 263 F.3d 603, 607-08 (6th Cir. 2001).

The base offense level for §2C1.1(a)(1) is 14. And the evidence in this case supports the conclusion that Allebban knew, or reasonably should have known, of the nature of the activity whose investigation he obstructed. He knew of the relationship between Kazmi and Shisha; he knew of the power that Kazmi wielded. He knew of the federal investigation, and its focus on Kazmi. He approached Shisha, in November and December of 2011, to warn him to say nothing to the authorities of any "gifts" to Kazmi. In January, when he met with Shisha and learned more of the "gifts" from Shisha to Kazmi, he was shocked; Shisha told him that he paid Kazmi because he had to. When the three men met the next day, Kazmi was worried that Shisha was wired, patted him down for a wire, and later pleaded with Shisha not to "throw me under the bus," and said that "the only way I can go down is this conversation." Allebban later met with Shisha several times to persuade him not to tell anyone, including his attorney or the FBI, about the "gifts" to Kazmi , and to sign a false document stating that

anything Shisha had given Kazmi was paid back as of August, 2011 – just before the federal investigation began. Although the words "bribe," "kickback," or "extortion" were not used in the recorded conversations, it was clear from the actions and context of these conversations that all involved, including Allebban, knew or should have known of the nature of the payments Shisha had made to Kazmi.

They also knew that Kazmi was a public official (§2C1.1(a)(1)); that there had been many more that one payment (§2C1.1(b)(1)); that the value of the payments was at least in the range of $30,000 to $70,000 (§2C1.1(b)(2) & 2B1.1(b)(1)(D)); and that Kazmi was in a high-level decision-making position (§2C1.1(b)(3)). Accordingly, under §2X3.1(a)(1), the offense level after a six level downward adjustment is 20, as calculated in the Presentence Investigation Report.

The court should apply this offense level, as calculated by the U.S. Probation Department.

Obstruction of prosecution of instant offense
Perjury at trial

The defendant testified falsely at trial in several respects, but particularly in denying his knowledge that the document that was the basis for his convictions was false. That testimony is irreconcilable with

the jury's verdict. Accordingly, he is subject to a two level upward adjustment under U.S.S.G. §3C1.1.

The 3C1.1 adjustment applies in a variety of circumstances, including a defendant's perjury at trial. To apply the adjustment on this basis, the court must determine that particular testimony by the defendant was knowingly false. This can be established if the defendant gave testimony that is irreconcilable with the factual findings that are explicit in the jury's verdict. *United States v. Parra*, 402 F.3d 752, 767 (7th Cir. 2005); *United States v. Johnson*, 302 F.3d 139, 154 (3d Cir. 2002).

Here, the jury convicted the defendant of Counts Three and Four, based on the August 16, 2011 document that defendant persuaded Shisha to sign and then gave to Kazmi. The violation charged was 18 U.S.C. §1519, and the court instructed the jury that the elements of that offense were:

> First, that the defendant falsified or made a false entry in a document or aided and abetted another person in doing so. Falsify means to make an untrue statement that's untrue at the time it's made and is known to be untrue at the time it's made.
> Second, that the defendant did so with intent to impede, obstruct or influence the investigation or proper administration of a matter within the jurisdiction of a department or agency of the United States. Intent in this context means that the government must prove beyond a reasonable doubt that Mr. Allebban intended to obstruct, impede

or influence.
And third, that he did so knowingly.

(2/14/13 Tr. at 125-26). By convicting the defendant of these counts, the jury necessarily found these facts to be established beyond a reasonable doubt.

In contrast, Allebban testified at trial that he did not know this document was false. This was a theme of his direct testimony, and was brought out sharply on cross examination:

Q. And this is the one we've talked about that's Government Exhibit 16 and 17 dated August 16th?
A. Correct.
Q. And it's you that brought it to the meeting, correct?
A. Yes.
Q. It was your idea?
A. No.
Q. Whose idea was it?
A. When I spoke to Tahir after I spoke with Phil, I told him that I wasn't comfortable with the receipts. He said that's fine, then don't do them, and he represented at this meeting that he had with Phil in August on the 16th and the conversation and the agreement that they had on that date, and he said we can just capture that on the documents then.
Q. So you're saying it was Mr. Kazmi's idea that you would make a single document with that date on it?
A. Yes.
Q. Mr. Allebban, you knew it wasn't true that all that money had been repaid as of August of 2011, didn't you?
A. No, I didn't.
Q. You knew that Mr. Shisha certainly said it wasn't true?
A. Yes, he said that.
Q. You knew, in fact, that he said, "How am I going to be able to explain all the cash withdrawals that came out of my accounts?"

A. Yes.
Q. "That I'm supposed to have if I got all this cash back from Mr. Kazmi?"
A. Correct.
Q. But you knew that he hadn't been paid back all that money, didn't you?
A. Can you repeat the question?
Q. You knew that Mr. Shisha, in fact, had not been paid back all the money?
A. That's what Mr. Shisha told me.
Q. But you knew that too, didn't you, sir?
A. No, I did not know that.

(2/13/13 Tr. at 41-42). This testimony directly contradicts the jury's finding that the document, Gov't exhibits 16 and 17, was false, that the defendant knew it was false, and that he falsified it with the intent to obstruct a federal investigation. Accordingly, the court should apply a two level adjustment under 3C1.1.

Guideline range

Accordingly, the defendant's offense level should be determined at 20; with a two level upward adjustment for perjury, the adjusted offense level should be 22. The resulting guideline range is 41-51 months.

Sentencing factors

As the court is aware, it must impose a sentence based on the factors set forth in Title 18, United States Code, Section 3553(a). The

government submits that the following statutory factors are most relevant to this case.

The Nature and Circumstances of the Offense

This was a very serious offense. Zayd Allebban was a public employee, and was closely associated with Tahir Kazmi, a powerful public official who used his position to extort payments from a significant county contractor. When Kazmi came under investigation, the defendant worked with him over a period of more than two months to obstruct that investigation and to conceal that facts regarding the payments Kazmi had received. It is this kind of activity that frequently frustrates investigations of public corruption, and allows such corruption to flourish as it has in the Detroit metropolitan area. Acquiescence in corruption, and aiding in its concealment, must be taken seriously, and punished seriously, to effectively attack the problems caused by corruption.

The sentencing guidelines adequately account for the circumstances of Mr. Allebban's offense conduct, and a guideline sentence is warranted.

History and Characteristics of the Defendant

Mr. Allebban has pointed out, in his sentencing memorandum, his good attributes, his good works, the high opinion some in the community have of him, and his family circumstances. While laudable, these factors cannot justify the noncustodial sentence that he seeks. As in *United States v. Peppel*, 707 F.3d 627, 641 (6th Cir. 2013):

> there is nothing to indicate that the support provided by [defendant] to his family, friends, business associates, and community is in any way unique or more substantial than any other defendant who faces a custodial sentence. Further, [defendant's] status in the community and chose profession cannot alone be the basis for such a conclusion. ("And we do not believe criminals with privileged backgrounds are more entitled to leniency than those who have nothing left to lose.")

(citations omitted).

The defendant also asks for sentencing leniency based on his "cooperation," apparently because he agreed to be interviewed two times (once with the protection of a *Kastigar* letter) and because he signed a waiver allowing access to an email account. This suggestion is risible. The defendant provided no information of value to the government, and indeed essentially insisted in his interviews that he had done nothing wrong and was aware of no wrongdoing.

Seriousness of the Offense, Promoting Respect for the Law, Providing Just Punishment, and Affording Adequate Deterrence

Zayd Allebban's crime was serious. The spectacle of a city employee who protects his boss and mentor from investigation for serious public corruption damages the faith of our citizens in the integrity and the fairness of their system of government. If Kazmi and Allebban had succeeded, a major crime of public corruption would not have been discovered or prosecuted.

Given these circumstances, principles of general deterrence and respect for the law support the imposition of a substantial sentence. Anything less than a significant prison sentence would send the message this conduct is tolerable. It is not.

General deterrence is especially important in a case like this: if obstruction of justice is not seriously punished, then others will feel free to conceal facts and frustrate critical investigations like the one defendant sought to block here. "Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." *United States v. Peppel*, 707 F.3d at 637 (citation omitted).

It has been said that "the accomplice to the crime of corruption is frequently our own indifference." Such indifference can only be exacerbated by the willingness of people like the defendant to help conceal corruption and to obstruct the investigation of it. In our nation of laws the only recourse for efforts to frustrate our criminal justice system comes through the sentencing responsibility now delegated to this court. In light of those factors, a substantial sentence is warranted.

Sentences Contemplated by the Sentencing Guidelines

The PSIR prepared by the U.S. Probation Department found that an advisory guideline range of 33 to 41 months applies to defendant's offense of conviction. (PSIR, ¶ 64). With the addition of a two level upward adjustment for defendant's perjury, the range should be 41 to 51 months. While a sentence within the advisory guideline range is not "per se reasonable," it does carry a presumption of reasonableness on appeal when the record shows that the district court considered the range as applied to a particular defendant in light of the § 3553(a) factors. *United States v. Buchanan*, 449 F.3d 731, 734 (6th Cir. 2006).

The Need to Avoid Unwarranted Sentencing Disparities

Finally, imposition of a sentence within the advisory Guideline range best serves "the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). Congress "sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct" prior to the Guidelines. *Rita v. United States*, 127 S. Ct. 2456, 2464 (2007). Because "uniformity remains an important goal of sentencing," "Section 3553(a)(6) directs district courts to consider the need to avoid unwarranted disparities." *Kimbrough v. United States*, 128 S. Ct. 558, 573-74 (2007)(emphasis by Court). The Guidelines "help to 'avoid excessive sentencing disparities,'" *Kimbrough*, 128 S. Ct. at 573-74, because "avoidance of unwarranted disparities was clearly considered by the Sentencing Commission when setting the Guidelines ranges," *Gall v. United States*,128 S. Ct. 586, 599 (2007), and because most defendants are sentenced within the Guideline Ranges.

Conclusion

For these reasons, the government submits that the court should impose a substantial custodial sentence in this case, taking into account the sentencing guideline range of 41 to 51 months.

Respectfully submitted,

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Dated: September 5, 2013

Certificate of Service

I hereby certify that on September 5, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the parties of record.

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